IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 20TH FEBRUARY 2007 / 1ST PHALGUNA 1928

RSA.No. 816 of 2005(E)

AS.116/1992 of ADDL. DISTRICT COURT-II, MAVELIKKARA
OS.334/1987 of MUNSIFF COURT,KAYAMKULAM
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APPELLANT/ADDITIONAL APPELLANTS 2 TO 6/DEFENDANT
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1. KESAVAN GOPALAN,
KANDELIL VEEDU, PERINGALA,
KAYAMKULAM (DIED)

2. GOURI KARTHIYANI,
KANDELIL VEEDU, PERINGALA, KAYAMKULAM.

3. NIRMALA, KANDELIL VEEDU, PERINGALA,
KAYAMKULAM.

4. SOBHANA, KANDELIL VEEDU,
PERINGALA, KAYAMKULAM.

5. VISWAKUMAR, KANDELIL VEEDU, PERINGALA
KAYAMKULAM.

6. ANILKUMAR, KANDELIL VEEDU,
PERINGALA, KAYAMKULAM.

BY ADV. SRI.C.RAJENDRAN
SMT.V.SUMITA

RESPONDENTS: RESPONDENT/PLAINTIFF

KUTTY SATHIAMMA,
KANDELIL KIZHAKKETHARAYIL,
PERINGALA P.O., KAYAMKULAM.

BY ADV. SRI.R.RAMADAS
SRI.R.RAMADAS

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 20/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON I.A.NO. 1558/05 IN RSA 816/05

DISMISSED

20/2/2007

SD/-M.SASIDHARAN NAMBIAR,JUDGE.

//True copy//

PA to Judge.

M.SASIDHARAN NAMBIAR,J.

R.S.A.NO. 816 OF 2005

Dated 20th February 2007

J U D G M E N T

Legal heirs of defendant in O.S.334/87 are the appellants. Respondent is plaintiff. Respondent filed suit seeking a decree for permanent prohibitory injunction contending that respondent is in possession of plaint schedule property having an extent of 4 cents of Puramboke land lying contiguously to the adjoining northern property obtained as per gift deed No.597 dated 25/2/1980 executed by mother and grand mother. According to respondent the puramboke land was enjoyed as part of the property gifted and deceased defendant had no manner of right or possession over the property and he attempted to trespass into the property. Respondent sought a decree for permanent prohibitory injunction restraining defendant from trespassing into the property. Defendant in his written statement contended that respondent is not in possession of the property and 2 cents of Puramboke land lying on northern side of thodu was lying

separately and defendant obtained it on kuthakappattom under Ext.B1 and later obtained Ext.B2 patta and has been in possession of the same since then and therefore respondent is not entitled to decree in respect of 2 cents in his possession.

2. Learned Munsiff framed necessary issues. On the side of respondent, including respondent 4 witnesses were examined and 3 exhibits were marked. On the side of defendant apart from himself, Advocate commissioner who submitted Ext.C2 report and C3 plan and a witness were examined. Exts.B1 to B6 were also marked. Learned Munsiff on the evidence found that though Ext.B1 was relied upon by defendant Ext.B1 does not show that possession was handed over thereunder and Ext.B2 patta was subsequently cancelled by Revenue Divisional Officer who is competent to cancel it, and therefore respondent cannot claim any right or title to the property. Relying on oral and documentary evidence, learned Munsiff found that respondent has established possession and appellant has no right or possession over the property and granted a decree in favour of respondent. Defendant challenged decree and judgment before Additional District Court, Mavelikkara in A.S.116/92. On the death of defendant, appellants were impleaded as

his legal heirs. Learned Additional District Judge on re-appreciation of evidence confirmed the decree and judgment and dismissed appeal. It is challenged in this second appeal.

3. Learned counsel appearing for appellant was heard. Argument of learned counsel appearing for appellant was that Ext.B1 kuthakappattom agreement of the year 1110 M.E and Ext.B2 patta subsequently granted in favour of deceased defendant by Tahsildar, Mavelikkara establish that original defendant was in possession of the property and there is no evidence to prove that he was subsequently divested of that possession and therefore courts below should have found that defendant was in possession of property and appellant is not in a possession of the property and therefore respondent is not entitled to the decree granted.

4. Learned Munsiff and learned District Judge found that Ext.B1 kuthakapattom agreement does not establish that possession was handed over to defendant thereunder. So also, though reliance was placed on Ext.B2, it is not disputed that Ext.B2 patta was subsequently cancelled by competent authority under Ext.A2 order. Neither Ext.B1 nor Ext.B2 establish

possession as claimed by appellant. Learned Munsiff and learned District Judge on appreciation of evidence entered a factual finding that respondent has been in possession of the plaint schedule property. Report submitted by commissioner was also relied upon to enter that finding. That factual finding cannot be interfered in exercise of jurisdiction under Section 100 of Code of Civil Procedure. No substantial question of law is involved in the appeal.

Second Appeal is dismissed in limine.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.